



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 25, 1998

Ms. JoAnn Wright
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P.O. Box 168046
Irving, Texas 75016-8046

OR98-2305

Dear Ms. Wright:

On behalf of the Keller Independent School District (the "school district"), you ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 118190.

The school district received a request from a parent for attorney fee bills for legal services provided the school district pertaining to the parent's child's case since April 1, 1997, as well as electronic mail and other documents referencing his son. The requestor also seeks certain financial reports and information concerning special education travel. You have submitted the fee bills only and assert that the requested bills are excepted from required public disclosure based on sections 552.101, 552.103 and 552.107(1) of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert that some of the requested information is made confidential by section 261.201(a) of the Family Code which provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an

investigation under this chapter or in providing services as a result of an investigation.

To the extent that the records submitted by the district deal with documents generated as a consequence of reports of alleged child abuse or neglect, the records are within the scope of section 261.201 of the Family Code. You have not cited any specific rule that the district has adopted with regard to the release of this type of information; therefore, we assume that no such regulation exists. Given this assumption, the requested records which are generated as a result of reports of alleged child abuse or neglect those records are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the district must withhold these records.¹

The Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, gives parents a right to inspect the education records of their children. Here, the requestor seeks fee bills regarding his son's case. We believe the fee bills that concern the requestor's child are education records for purposes of FERPA. *See* 20 U.S.C. § 1232g(a)(4)(A). Generally, exceptions to disclosure under the Open Records Act do not apply to a student's or a parent's request for his child's educational records pursuant to FERPA. *See* Open Records Decision No. 431 (1985). However, this office has been informed by the Family Policy Compliance Office of the United States Department of Education that a parent's right to information about his child under FERPA does not prevail over a school district's right to assert the attorney-client privilege. Letter from LeRoy S. Rooker, Director, Family Policy Compliance Office, United States Department of Education, to Loretta R. DeHay, Assistant Attorney General, Office of the Texas Attorney General (Dec. 1994). The Open Records Act incorporates the attorney-client privilege in section 552.107(1) of the Government Code and applies to

information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

Although section 552.107(1) appears to except information within rule 1.05 of the Texas State Bar Disciplinary Rules of Professional Conduct, the rule cannot be applied as broadly as written to information that is requested under the Open Records Act. Open Records Decision No. 574 at 5 (1990). To prevent governmental bodies from circumventing the Open Records Act by transferring information to their attorneys, section 552.107(1) is

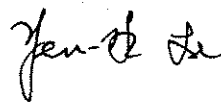
¹We note, however, that if the Texas Department of Regulatory Services has created a file on this alleged abuse, the child's parent(s) may have the statutory right to review that file. *See* Fam. Code § 261.201(f).

limited to material within the attorney-client privilege for confidential communications; "unprivileged information" as defined by rule 1.05 is not excepted under section 552.107(1). Open Records Decision Nos. 574 at 5 (1990), 462 at 13-14 (1987).

Thus, this exception protects only the essence of the confidential relationship between attorney and client from the disclosure requirements of the Open Records Act. Open Records Decision No. 574 at 5 (1990). Consequently, a governmental body may not withhold fee bills in their entirety under this exception, but may only withhold information about the details of the substance of communications between the attorney and the client. Thus, if a governmental body seeks to withhold attorney fee bills under section 552.107(1), the governmental body must identify the portions of the bills that reveal client confidences or attorney advice. *See* Open Records Decision No. 589 (1991). In general, documentation of calls made, meetings attended, or memos sent is not protected under this exception. *See id.* We have marked the information the school district may withhold from public disclosure based on section 552.107(1). The remainder of the information must be released to the requestor because, as a parent, he has a right to inspect the education records of his child under FERPA as discussed above.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

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Ref.: ID# 118190

Enclosures: Marked documents